

corrections rather than substantial alterations when the sentence is unjustly severe or unjustly lenient having regard to the gravity of the facts proved.

In *Abdul Rahman v. Public Prosecutor of Johore* 7 M.L.J. 219 the Court of Appeal of Johore indicated that an Appellate Court would reduce or enhance sentences when, having before it all the material which the trial Judge had before him, it considers, having regard to all the circumstances of the case, that the sentence imposed was manifestly excessive or inadequate.

The sentence of the Court of first instance should not be altered unless the appellate Court considers the sentence unjust. An Appellate Court must reject "the lore of nicely calculated less or more" in matters of sentence. Before the sentence is altered it must be manifestly wrong, wrong either in the sense of being illegal or of being unsuitable to the proved facts and circumstances.

This Court has at the present sitting substituted a sentence of nine months R.I. for a small fine in a case of serious assault; it also reduced a sentence of four years to one of two years because the one sentence was manifestly insufficient and the other manifestly excessive.

In the present case the learned Judge appreciated the gravity of the offence. From the evidence and from the view taken by the learned Judge it does not appear that the sentence was manifestly excessive. We think the sentence imposed by the Magistrate ought not to have been reduced.

Had there been no appeal to a Judge the sentence originally imposed would have expired before the present appeal came on and the present judgment will not adversely affect the respondents.

Reference answered.

[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

April 28, 1938.

THE PERAK RIVER HYDRO-ELECTRIC
POWER COMPANY, LIMITED.

(Plaintiffs)

v.

CHEN YEOW AND ANOTHER

(Defendants).

(PERAK CIVIL APPLICATION No. 9 of 1938)

Civil Procedure Code (Cap. 7) Sec. 8—Supreme Court and Court of Magistrate with extended jurisdiction—Jurisdiction.

There is no provision of law empowering a Registrar of the Supreme Court to reject a plaint for the sole reason that it could have been presented in a lower Court.

J. L. Woods for Plaintiffs.

Aitken, J.—This is an appeal from a refusal of the learned Assistant Registrar to admit a "Summary Procedure" plaint claiming \$868/- from the above named Defendants. In refusing to admit the same he was following a decision of my learned predecessor in office, which I myself have hitherto accepted as correct.

That decision is based on Section 8 of the Civil Procedure Code, which enacts that "every suit shall be instituted in the Court of the lowest grade competent to try it", and on the fact that the Court of the first class Magistrate at Ipoh, when constituted by Mr. L. C. Simpson-Gray, may "hear and determine all suits within its local jurisdiction when the value in dispute does not exceed \$1,000/-."

After listening to Mr. J. L. Woods for the Plaintiff-Appellant, and studying the relevant sections of the Civil Procedure Code, I have come to the conclusion that this plaint should be admitted for the following reasons:—

1. The words "shall be instituted" in S. 8 constitute a direction to the suitor, and are not imperative upon the Courts for whose benefit or convenience they are intended. Thus, this Section is a rule of procedure and not of jurisdiction; and it must not be construed as ousting the jurisdiction of a superior Court.
2. Since Section 49 of the Civil Procedure Code does not apply to the Supreme Court, there is no provision in that Code or anywhere else in our *corpus juris* empowering a Registrar of the Supreme Court to reject a plaint for the sole reason that it could have been presented in a lower Court.

It seems to me, therefore, that the learned Assistant Registrar should admit this plaint because (1) the Supreme Court certainly has jurisdiction to deal with it, and (2) the learned Assistant Registrar has no power to reject it on the sole ground that it could have been presented to a lower Court. Mr. Woods invited me to hold that Section 8 of the Civil Procedure Code does not apply to the institution of summary suits for debts or liquidated demands under and in accordance with Section 459 of the Code, because only the Supreme Court can try such suits and, therefore, there is no Court of a lower grade competent to try such suits. As it is unnecessary for me to express an opinion on that somewhat difficult point in view of the decision herein at which I have arrived *aliunde*, I will gladly refrain from doing so.

In the result this appeal is allowed, and the learned Assistant Registrar is hereby directed to admit the plaint. It must be understood, however, that the Plaintiff is instituting this suit in the Supreme Court at his own risk. If Mr. Woods' contention, which I have just mentioned without deciding it, should not be accepted by the Court, then the Plaintiff, though obtaining a summary judgment, may find himself deprived of some part of his costs. Should he fail to obtain a summary judgment, and leave to defend be given, then his position in the matter of costs may become still more unfortunate. Rule 4 of 1932, sub-rule 13 appears to be in point.

Appeal allowed.





MR. MURRAY M. JACK.
REGISTRAR,
SUPREME COURT, SINGAPORE.